Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLE

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1976

NO. 76-236

CALVIN T. SHERARD
Petitioner

V.

R. B. SHELTON, Director
WAYNE COUNTY DEPARTMENT OF SOCIAL SERVICES
ON BEHALF OF: BETTYE J. SHERARD,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

CALVIN T. SHERARD
In Pro Per
20029 Roselawn
Detroit, Michigan
48221

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1976

NO._____

CALVIN T. SHERARD, Petitioner

v.

R. B. SHELTON, Director
WAYNE COUNTY DEPARTMENT OF SOCIAL SERVICES
ON BEHALF OF: BETTYE J. SHERARD

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE MICHIGAN SUPREME COURT

To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the United States:

Calvin T. Sherard, the Petitioner herein prays that a Writ of Certiorari issue to review the Judgment and opinion of the Michigan Supreme Court entered in the above entitled case on June 4, 1976.

OPINIONS BELOW

The June 4, 1976 opinion of the Michigan Supreme Court, whose judgment is herein sought to be reviewed, is unreported and is reprinted in Appendix A-1. The December 1, 1975 Judgment of Michigan Court of Appeals dismissing petitioners appeal for an Order to Invalidate Wayne County Circuit Court Order and is re- printed in Appendix B, hereto, infra page B-1.

The September 29, 1975 judgment of Michigan Court of Appeals denying petitioners motion for a stay and reprinted in Appendix C, hereto infra page C-1. The July 18, 1975, Wayne County Circuit Court Order to Modify Family Support Order on petitioners motion and is reprinted in Appendix D, infra page D-1. The September 13, 1974 Wayne County Circuit Family Support Order that came out of a Complaint filed and signed by the Director of Wayne County Social Services, R.B. Shelton and entered without a hearing is reprinted in Appendix E, infra page E-1.

JURISDICTION

The Order of Wayne County Circuit Court was entered September 13, 1974 without giving petitioner a hearing on the Complaint, in Case #74-011-235-DS. A Judgment to Modify said Order was entered July 18, 1975 by Wayne County Circuit Court. A timely Claim of Appeal

was filed August 1, 1975 in Michigan Appeals Court after learning of violation of due process.....appeal dismissed December 1, 1975.

A timely application for Leave to Appeal was filed October 17, 1975 in Michigan Supreme Court.....dismissed June 4, 1976. This Petition for Certiorari was filed within thirty days of that date. This Courts jurisdiction is invoked und r 28USCS § 1257 (3).

QUESTION PRESENTED

Is a court order that was entered without giving the petitioner an opportunity to be heard, and in violation of his due process guaranteed by the Fourteenth Amendment to the U.S. Constitution enforceable?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the first section of the Fourteenth Amendment to the Constitution of the United States, which provides as follows:

No State shall make or enforce any law which shall abridge the priviledges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF CASE

This is a family support action that was filed by R. B. Shelton, Director of

Wayne County Social Services in behalf of Petitioner's wife, Bettye Sherard. Even though Bettye Sherard closed her Aid to Dependent Children case #K8230367A August 28, 1974, both parties were ordered to appear before the Honorable Nathan Kaufman on September 13, 1974 for a hearing on the Complaint.

When both parties appeared in Judge Kaufman's Courtroom, they identified themselves to Assistant Prosecutor Bernard Ginsberg of the Friend of the Court, Wayne County Circuit Court.

Assistant Prosecutor Ginsberg gave petitioner's wife permission to leave to return to work. Later, the Assistant Prosecutor took the petitioner to a back room where he told the petitioner that he had been ordered to pay $22.50 per week per child, (2), by Judge Kaufman.

When Petitioner asked to be taken before Judge Kaufman, Assistant Prosecutor Ginsberg said, "I can't, the Judge has already ruled, I then left. This Court Order has been enforced since date of entry, September 13, 1974, and is pursuant to Stuart v. Palmer, 74 N. Y.

I attribute Assistant Prosecutor Ginsberg's action to a confrontation we had over a court order for attorney fees in a previous divorce action, #215-833, which I won.

If I had been given an opportunity to be heard, I could have proven my innocence.

REASONS FOR GRANTING WRIT

1. Certiorari Should Be Granted to Resolve Court Order Entered Without Giving Petitioner a Hearing, And In Violation of Rights Guaranteed by the Fourteenth Amendment of the U.S. Constitution.

   The first step in the judicial process is normally a hearing at which time the Defendant is examined; the presiding magistrate should dispose of the case directly, and either dismiss the charge, or find the defendant guilty.

   In Powell v. Alabama, 287 US. 45(1932). Justice Sutherland stated: "It never has been doubted by this Court, or any other, so far as we know, that notice and hearing are preliminary steps essential to the passing of any enforcable judgment.

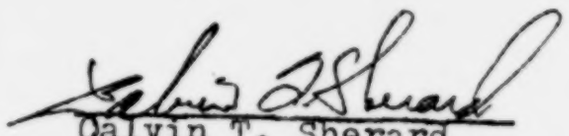
2. To Review States' Action in violation of the Fourteenth Amendment of the U.S. Constitution.

   The "due process" clause of the Fourteenth Amendment assures the right to a "public trial" in state proceedings. Oliver, in re, 333 U.S. 257 (1948), 43, 197.

"There are certain immutable principals of justice which inhere in the very idea of free government which no member of the Union may disregard," Holden v. Hardy, 169 U.S. 366 (1898), 40.

Conclusion

Wherefore, petitioner respectfully prays that a Writ of Certiorari be granted.



Calvin T. Sherard
20029 Roselawn
Detroit, Michigan

August 6, 1976

APPENDICES

APPENDIX A

MICHIGAN SUPREME COURT

NO. 57629

WAYNE COUNTY DIRECTOR OF SOCIAL SERVICES
ON BEHALF OF BETTYE JOYCE SHERARD,

Appellant,

v.

CALVIN T. SHERARD,

Appellee.

APPEAL From MICHIGAN APPEALS COURT

Thomas Giles Kavanagh, Chief Justice,
G. Mennen Williams,
Charles L. Leven,
Mary S. Coleman,
John W. Fitzgerald,
Lawrence B. Lindemer,
James L. Ryan, Associate Justices

Filed on June 4, 1976

ORDER

On Order of the Court, the application in pro per for leave to appeal is considered and the same hereby is DENIED, because the appellant has failed to pursuade the Court that the question presented should be reviewed by this Court.

Justice Levin dissents as follows:

I would remand this cause for an evidentiary hearing to determine whether Calvin Sherard was denied an opportunity for a hearing before entry of the Order of September 13.

For the Court:

(signed) Cobin R. Davis
Deputy Clerk

APPENDIX B

COURT OF APPEALS OF THE STATE OF MICHIGAN

NO. 25490

BETTYE JOYCE SHERARD,
Appellee,

v.

CALVIN THOMAS SHERARD,
Appellant.

APPEAL FROM WAYNE COUNTY CIRCUIT COURT
Present, The Honorable T. John Lesinski

Vincent J. Brennan
Richard M. Maher
Presiding Judges

Filed December 1, 1975

ORDER

In this cause a motion to dismiss the appeal having been filed by the Plaintiff-Appellee, and an answer in opposition thereto having been filed by the Defendant-Appellant, and due consideration thereof having been had by the Court,

IT IS ORDERED that a Motion to Dismiss be, and the same is hereby GRANTED and this Appeal is dismissed for the reason that the Order of July 18, 1975, is in

actuality an Order denying the defendant-appellant's petition to modify family support order and is therefore a post-judgment order appealable by the filing of an application for leave to appeal pursuant to GCR 1963, 806.2,

IT IS FURTHER ORDERED that this dismissal is without prejudice to the filing of a delayed application for leave to appeal pursuant to GCR 1963, 806.4,

IT IS FURTHER ORDERED that in the interest of efficient judicial administration, that is is suggested that any further matters concerning the subject matter of this cause be raised in the pending divorce proceeding in the Wayne County Circuit Court, being Wayne County No. 75-059534 DM which has jurisdiction to consider these matters.

For the Court:

(signed) Ronald L. Dzierbicki
Clerk of the Court

APPENDIX C

COURT OF APPEALS OF THE STATE OF MICHIGAN

NO. 25490

R. B. SHELTON, Wayne County Director of Social Services, on Behalf of:
Bettye Joyce Sherard,

Apellee,

v.

CALVIN THOMAS SHERARD

Appellant.

APPEAL FROM WAYNE COUNTY CIRCUIT COURT

Present, The Honorable T. John Lesinski

Vincent J. Brennan
Richard M. Maher
Presiding Judges

Filed September 29, 1975

ORDER

In this cause a Motion is filed by appellant for Stay of Proceedings, and an answer in opposition thereto having been filed, and due consideration thereof having been had by the Court

IT IS ORDERED that the motion for stay of proceedings be and the same is hereby DENIED.

For the Court:

(Signed) Ronald L. Dzierbicki
Clerk of the Court

APPENDIX D

WAYNE COUNTY CIRCUIT COURT

NO. 74-011 235-DS

BETTYE SHERARD
Plaintiff

v.

CALVIN SHERARD
Defendant

APPEAL FROM WAYNE COUNTY CIRCUIT COURT
Present, The Honorable Myron H. Wahls

Entered July 18, 1975

ORDER MODIFYING FAMILY SUPPORT ORDER

This action having been brought on to be heard upon the defendant's motion, and the Friend of the Court having filed a report and recommendation of the parties being duly informed of the recommendation and date of hearing and the Court being fully advised in the premises:

IT IS HEREBY ORDERED that the defendant, CALVIN SHERARD, shall be required to pay support under the Family Support Order, by means of a Wage Assignment of $50.00 per week, of which $5.00 shall be applied toward the arrearage.

IT IS FURTHER ORDERED that the other provisions of the Family Support Order heretofore entered shall remain in full force and effect.

For the Court:

(Signed) Myron H. Wahls
Circuit Judge

Frederick C. Hailer P14523
Friend of the Court

APPENDIX E

WAYNE COUNTY CIRCUIT COURT

NO. 74-011-235-DS

R. B. SHELTON, Wayne County Director of Social Services, On Behalf of: Bettye Sherard

Plaintiff

v.

CALVIN SHERARD

Defendant

Present, The Honorable Nathan Kaufman

Entered September 13, 1974

ORDER

IT IS ORDERED that defendant pay to the office of the Friend of the Court, 600 Randolph Street, Detroit, Michigan 48226, commencing 09/13/74, the sum of $22.50 per week as support for each of the two minor children, KAREN SHERARD born 09/11/61, STEPHANIE SHERARD born 07/28/68, and continuing until each child attains the age of eighteen (18) years or until further order of the Court;

IT IS FURTHER ORDERED that the defendant husband shall provide the necessary medical, dental and hospital expenses and

maintain hospitalization insurance for the plaintiff until further order of the court and for each child until each child attains the age of eighteen (18) years or until further order of the Court;

IT IS FURTHER ORDERED that defendant husband shall pay to the Friend of the Court, the sum of $1.50 per month, payable semi-annually in advance on January 2nd and July 2nd hereafter while the order for support is operative. Initial payment for months preceding next regular due date shall be made forthwith.

(Signed) Nathan Kaufman
Circuit Judge